

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

KENNETH BROCKMAN,	}	
	}	
Plaintiff,	}	
	}	
v.	}	CIVIL ACTION NO.
	}	05-AR-0881-S
	}	
UTILITY BOARD OF THE TOWN OF	}	
BLOUNTSVILLE, ALABAMA,	}	
	}	
Defendant.	}	

**MEMORANDUM OPINION AND ORDER**


\_\_\_\_\_All motions pending in the above-entitled case came on to be heard at this court's regular motion docket on May 20, 2005. There was no request for oral argument and no argument was presented.

The motion filed by plaintiff on May 12, 2005, pursuant to Rule 12(b)(6), F.R.Civ.P., to dismiss the counterclaim is well taken, and is GRANTED. A claim for attorneys' fees under a fee shifting statute cannot be presented by defendant unless and until the defendant is a prevailing party. Accordingly, the counterclaim is DISMISSED WITHOUT PREJUDICE.

Plaintiff's motion filed on May 12, 2005, for more definite statement by defendant, or, alternatively, to order defendant to confirm its general denial, is DEEMED a motion to strike the purported answer that was filed by defendant on May 12, 2005, and that was stricken by the court on May 16, 2005. Although the court may have been hasty in striking the answer as to which defendant's counsel's failed to affix his signature electronically, the answer

is a textbook example of non-compliance with the requirements of Rule 8(b), F.R.Civ.P. For instance, the court is unwilling to assume that defendant is in good faith denying the allegation in the complaint that plaintiff was employed by defendant. Therefore, the order striking defendant's answer is CONFIRMED. Defendant shall answer the complaint in a way that complies with Rule 8(b) **within seven (7) calendar days**, or defendant will be in default.

DONE this 24<sup>th</sup> day of May, 2005.

  
WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE